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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5 - 29.5 GHz Frequency Band, to Reallocate the 29.5 - 30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	)	CC Docket No. 92-297
	)	
and	)	
	)	
Suite 12 Group Petition for Pioneer's Preference	)	PP-22

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COMMENTS OF
<u>THE NATIONAL CABLE TELEVISION ASSOCIATION, INC.</u>

The National Cable Television Association, Inc. ("NCTA") hereby submits its comments in the above-captioned proceeding. NCTA is the principal trade association of the cable television industry, representing the owners and operators of cable systems serving 80 percent of the nation's 60 million cable households. Its members also include cable programming networks, cable equipment manufacturers and others affiliated with the cable television industry.

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INTRODUCTION

In its Third Notice of Proposed Rulemaking and Supplemental Tentative Decision ("Third Notice"), the Commission seeks further comment on the regulatory framework of local multipoint distribution service ("LMDS") in the 28 GHz band. At the outset of this proceeding, the Commission tentatively proposed not to restrict eligibility for LMDS licenses, but now seeks additional comment on whether, as a matter of policy, it should restrict cable's participation in LMDS technology.[1] We submit that the Commission's first inclination was the right one -- marketplace conditions do not warrant a cable-LMDS cross-ownership ban.

The Commission's broad public policy objective has been to encourage open entry by media companies into each other's businesses. LMDS is a new medium that may offer a range of traditional and innovative new services, including two-way video, two-way voice and data, and broadband telecommunications services.[2] Given the thriving array of alternative video delivery media, there is no need to adopt a cable-LMDS cross-ownership ban to preserve LMDS spectrum for broadband video competition. Moreover, a policy of open access to LMDS spectrum may provide a springboard for cable and other providers to introduce competition in the delivery of non-video services in the local exchange market.

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1 In the Matter of Rulemaking to Amend Part 1 and Part 21 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, CC Docket No. 92-297, Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration, 8 FCC Rcd 557 (1993).

2 Third Notice at ¶93.

In an era when the Commission is moving away from cross-ownership limitations, there is no reason to single out the cable industry from participation in the development of new services in the LMDS band.[3] This is particularly so when telephone companies are not precluded from supplementing their capabilities with LMDS technology. Therefore, we urge the Commission to foster competition in new narrowband telecommunications services by not foreclosing cable eligibility for LMDS licenses.

DISCUSSION

In the Third Notice, the Commission tentatively concludes that there are no statutory or regulatory restrictions that prohibit a cable operator from holding an interest in an LMDS licensee. In particular, the Commission correctly finds that the cable-MMDS cross-ownership restriction in Section 613(a)(2) of the Communications Act, 47 U.S.C. §533(a)(2), is limited, on its face, solely to MMDS.[4] Moreover, the legislative history of the 1992 Cable Act is unequivocal that the cross-ownership provision bars a cable operator from owning " . . . MMDS or SMATV systems in the same areas where it holds a franchise for a cable system."[5] There is no evidence that Congress even contemplated including LMDS in the cross-ownership restrictions. Indeed, a cable-DBS cross-ownership ban was considered and rejected in the original Senate bill, S. 12. Had Congress intended to go beyond MMDS and

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3 See e.g. Public Notice, "Commission Announces Enforcement Policy Regarding Telephone Company Ownership of Cable Television Systems," DA 95-520, March 17, 1995; In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, Second Report and Order, 73 R.R. 2d 1477, 1500.

4 Third Notice at ¶104.

5 See H.R. Conf. Rep. No. 862, 102 Cong. 2d Sess. 81 (emphasis supplied).

SMATV ownership restrictions, it could have specifically done so in the statute.

Nevertheless, the Commission asks whether the same policy considerations that led Congress to impose a cable-MMDS cross-ownership ban might justify extending the ban to cable-LMDS combinations. In restricting cable eligibility for MMDS licenses five years ago, the FCC sought to bolster wireless technology as a multichannel competitor to cable television.[6] Congress similarly believed that restricting cable operators from owning MMDS facilities would enhance competition in the delivery of video programming and, in particular, prevent operators from warehousing spectrum that might be used by a potential competitor.[7] These policy justifications -- to the extent they were valid in the early 90s -- are not valid today.

The competitive landscape has changed dramatically since that time. Competition to cable is here today and every indicator points to continued rapid growth in the near future. In the past year, direct broadcast satellite ("DBS") has emerged as one of the fastest growing introductions ever of a consumer electronic product. It offers digital, multichannel video service directly to consumers nationwide, including traditional cable networks and dozens of pay-per-view channels. Wireless cable systems (MMDS) have become more viable competitors as a result of increased channel capacity,

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6 In Re Amendment of Parts 21, 43, 74, 78 and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational Fixed Microwave Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service and Cable Television Relay Service, Report and Order, 5 FCC Rcd. 6410, 6416-17 (1990).

7 See S. Rep. No. 102-92, 102d Cong., 1st Sess. 47 (1991).

government-mandated access to cable programming and, most recently, the infusion of capital from the telephone industry. As telephone companies venture into wireless services, they are moving swiftly toward constructing video dialtone systems, switched video, and traditional cable systems. Meanwhile, broadcast television, already a formidable competitor to cable, is preparing to deliver a far greater number of broadcast services. As the Commission recognizes, the competitive alternatives for the distribution of video services are undeniably on the rise [8]

But the nascent LMDS and interactive video, data and voice industry is just beginning. LMDS may provide a multifunctional transport system for a "wealth" of services including two-way video, teleconferencing, telemedicine, telecommuting, data services and global networks.[9] Perhaps its greatest potential is not for traditional video services, but in serving as a platform for competition in the local exchange and new interactive telecommunications market. At the same time, as the Commission notes, cable is emerging as a potentially significant source of competition to the local exchange carriers.[10] LMDS spectrum may be an important adjunct to wired facilities in the provision of local communications services. Thus, the threat that cable operator access to LMDS licenses may eliminate a potential video competitor is far outweighed by the potential for cable operators to help to develop LMDS to compete with non-video services.

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8 Third Notice at ¶77.

9 Id. at ¶2.

10 Id. at ¶106.

Yet the Commission still ponders whether the policies underlying the cellular-personal communications services (PCS) cross-ownership ban are analogous to cable operator ownership of LMDS licenses. The rationale for imposing a cellular-PCS cross-ownership restriction was concern over the "potential for unfair competition if cellular operators are allowed to operate PCS systems in areas where they provide cellular service."[11] But the Commission's concern that cable operators, like cellular operators in the PCS market, might stifle the development of LMDS technology is not warranted. Cable operators have every incentive to develop the LMDS band as they experiment with and expand their capabilities in the provision of telecommunications services.

Moreover, if cable operators hamper the development of LMDS, the Commission can step in to restrict further cable involvement in LMDS services. But there is no justifiable policy basis for preventing the cable industry from optimizing its delivery of innovative new services with LMDS technology at the same time that local exchange carriers and other service providers are freely able to incorporate LMDS technology into their distribution strategy.

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[11] The Commission decided not to preclude local exchange carriers from owning and operating PCS facilities in their service areas. Although the Commission found that PCS was likely to be both a complement and potentially a competitor to local exchange carriers, it concluded that LEC participation in PCS would produce significant economies of scale between wireline and PCS networks and promote rapid development of PCS services. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Gen. Docket No. 90-314, Second Report and Order, 73 R. R. 2d 1477, 1500.

CONCLUSION

In sum, there is no need for the Commission to take the drastic measure of adopting a cable-LMDS cross-ownership restriction to jumpstart competition in video services. Rather, the LMDS market should be free and open to all comers looking to offer a range of services, particularly competitive non-video services.

Respectfully submitted,

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